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FEDERAL COMMUNICATIONS COMMISSION  
U.S. DEPARTMENT OF THE SECRETARY

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December 18, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: In the Matter of Cellular Service and Other Commercial Mobile  
Radio Services in the Gulf of Mexico, WT Docket No. 97-112  
WRITTEN EX PARTE PRESENTATION

Dear Ms. Salas:

On behalf of Petroleum Communications, Inc. ("PetroCom"), this letter responds to the October 6, 1998 *ex parte* presentation by PrimeCo Personal Communications, L.P. ("PrimeCo") to the Commission's staff in the above referenced proceeding.<sup>1</sup>

In its presentation, PrimeCo argued that Personal Communications Service ("PCS") licensees in coastal markets are authorized to serve offshore waters in the Gulf of Mexico ("Gulf"). However, PrimeCo does not acknowledge the limits of that authority, perhaps suggesting that there are none. Therefore, clarification of the service area boundaries of coastal PCS markets is in order, so that no ambiguity remains.

PCS license and service areas are based on Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs") as set forth in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd edition [hereinafter "Rand McNally"]. 47 C.F.R. §§ 24.13, 24.202. MTAs and BTAs consist of counties, and therefore, the county line demarcates the market boundary. See

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<sup>1</sup> In the Matter of Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112, *Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 4576, 4601 (1997) [hereinafter *Second FNPRM*].

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Rand McNally at 4 (defining MTA and BTA). These county lines do extend offshore. In Texas and Florida, the county lines extend 3 marine leagues (9 nautical miles) from the coast.<sup>2</sup> In Louisiana, Alabama and Mississippi, the county lines extend 3 geographic miles.<sup>3</sup> Therefore, coastal PCS markets are authorized to serve offshore areas, but only to the extent that county lines extend into Gulf waters. The field strength of a PCS licensee's system cannot exceed a predicted or measured median field strength of 47 dBuV at any location along the boundary of the PCS service area, which is the county line. 47 C.F.R. § 24.236.

Contrary to PrimeCo's assertion, the footnote in *Mobil Oil Telcom, Ltd.* does not provide for limitless authority for coastal PCS licensees. 11 FCC Rcd 4115, 4116 n.10 (WTB 1996). *Mobil Oil* concerned whether primary status would be granted to an applicant relocating a fixed point-to-point microwave station in the 2 GHz band approximately 5 miles off the Alabama coastline. The Commission granted primary status, stating in the footnote as dicta that coastal PCS licensees are "eligible" to serve offshore waters. 11 FCC Rcd at 4116 n.10. Being "eligible" is not being "authorized," and in no way can dicta in a footnote be construed as a license for any PCS licensee to operate beyond its authorized county line boundaries. Further, granting primary status to a microwave facility 5 miles off the Alabama coastline is consistent with a three league/three mile limit for coastal PCS licensees. Any extension of a coastal PCS licensee's service area beyond the county line boundaries must be separately licensed.<sup>4</sup>

In addition, PrimeCo suggests that it can serve Gulf waters without limit based on the Commission granting secondary authority to a licensee in the *Datacom* ruling.<sup>5</sup> The Commission should reject that suggestion. In order to accommodate Emerging Technology Services ("ETS"), the Commission will not grant primary status for a *new* private fixed microwave station regardless of where it is located and common carrier operations are generally prohibited.<sup>6</sup> Therefore, the mere fact that the Commission did not grant primary status to the *Datacom* licensee in the 2 GHz band does not mean that PrimeCo can exceed its market boundaries.

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<sup>2</sup> Fla. Const., Art. II § 1(a); Tx. Nat. Res §§ 11.012(a), 11.013(a) (1996).

<sup>3</sup> *United States v. Louisiana*, 470 U.S. 93, 95 (1984).

<sup>4</sup> In the cellular radiotelephone service, the Commission has noted that coastal MSA licensees may serve areas within the corresponding three mile/three league limit "unless and until their off-coastal water areas are separately licensed." *Petroleum Comm.*, 3 FCC Rcd at 399-400; *see also Petroleum Comm.*, 4 FCC Rcd at 4086-87.

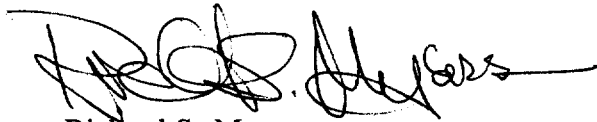
<sup>5</sup> *Rigs Tel., Inc. d/b/a Datacom*, DA 98-1739 at ¶ 10 (WTB released Sept. 1, 1998).

<sup>6</sup> 47 C.F.R. §§ 101.81, 101.101; *Datacom*, DA 98-1739 at ¶¶ 9-12; PrimeCo Presentation at 2; In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993) [hereinafter *Third Report and Order*]. The Commission is clearing out the 2 GHz band for ETS, which includes not only PCS, but other services to be developed and authorized in future rulemakings. The 2 GHz band is not the exclusive domain of PCS.

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PrimeCo states that it serves customers in both the coastal and offshore areas. PrimeCo Presentation at 1. It further states that PrimeCo's operations have necessitated the relocation of an incumbent fixed microwave licensee located 250 miles off the Texas coast. *Id.* at 3. The Texas county lines extend only three marine leagues offshore, and PrimeCo must maintain a predicted or measured median field strength of 47 dBuV at any location along the boundary. PetroCom queries whether the need to relocate an incumbent 250 miles offshore was prompted by PrimeCo's operations outside its authorized service area boundary.<sup>7</sup> In any event, PetroCom agrees with PrimeCo that the Commission should not authorize geographic area licensing for PCS in the Gulf of Mexico, but for a different reason, namely, that the record in the Gulf rulemaking lacks sufficient economic justification for geographic licensing of PCS in the Gulf at this time.<sup>8</sup>

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard S. Myers", written over a horizontal line.

Richard S. Myers  
Counsel to Petroleum Communications, Inc.

cc: Steve Weingarten  
Steve Markendorff  
Mike Ferrante  
Linda Chang  
Luisa L. Lancetti  
Counsel to PrimeCo Personal Communications, L.P.

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<sup>7</sup> Unfortunately, PCS licensees are not required to notify the Commission when constructing its sites. Therefore, PetroCom was unable to determine the exact location of PrimeCo's operations in the offshore areas of the Texas coastline.

<sup>8</sup> Such a justification is required. See *Second FNPRM*, 12 FCC Rcd 4576 ¶¶ 60, 63.